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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. EDWARD JIRO BLANCO, Defendant and Appellant.	G030464 (Super. Ct. No. 01HF0839) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Everett W. Dickey, Retired Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Michael R. Totaro, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, James D. Dutton and Michael T. Murphy, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

THE COURT:*

Following the denial of his motion to suppress, Edward Jiro Blanco pled guilty to one count of possession of marijuana for sale, one count of unauthorized connection to an electrical line, and one count of electricity theft. The court sentenced him to 180 days in jail and placed him on three years probation.

On July 31, 2001, Costa Mesa police officers responded to an early morning report from a neighbor that there was a domestic disturbance and loud argument going on outside Blanco's residence. When the police arrived and knocked on his door, they heard Blanco yelling and use the word "bitch." When he opened the door, he appeared very agitated. In response to their questioning, Blanco admitted having a confrontation with a drunk woman, but insisted she had already left. He refused to give the officers her name.

Relying on what they had heard and seen, and Blanco's refusal to give them the woman's name, the officers, fearing there might be someone inside, injured, decided to enter the residence. While they did not find anyone, in one room the officers came across a sophisticated (and inexpensive) marijuana growing system. Blanco testified at the hearing. He admitted a drunk woman had come to his door that night, and that he knew her, but said he sent her away. He testified he yelled when the officers knocked because they had awakened him, he thought the woman had returned, and he was tired of dealing with her.

Blanco argues the prosecution relied on the "caretaker exception" to the Fourth Amendment warrant requirement to justify the warrantless entry, that there is no federally-recognized caretaker exception, and thus the California Supreme Court's reliance on that "exception" in its plurality opinion in *People v. Ray* (1999) 21 Cal.4th 464 was inconsistent with federal law. We do not address that issue, however, for a

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* Sills, P. J., Rylaarsdam, J., and Moore, J.

number of reasons, not the least of which is nothing in the record suggests the superior court relied on that exception in making its ruling. True, the prosecution made that argument, but the court never mentioned that exception and made its ruling based on whether exigent circumstances justified the entry.

Substantial evidence supports the superior court's findings that the officers subjectively believed immediate action was needed under the facts. (See *People v. Higgins* (1994) 26 Cal.App.4th 247, 251.) They were responding to a domestic violence call. When they arrived, they heard yelling and someone say "bitch." Blanco was agitated when he answered the door, and he refused to give the officers information that would have allowed them to verify his story that the drunk woman who had been there was gone and not in danger.

The officers' actions were also objectively reasonable. As this court explained in *Higgins*, officers responding to a domestic violence call should investigate as to whether the victim has been harmed, or is vulnerable to further injury. (See *People v. Higgins*, *supra*, 26 Cal.App.4th at p. 254.) While the officers here did not see the alleged victim (which Blanco emphasizes distinguishes this case from *Higgins*) that is a fact that actually strengthens the objective reasonableness of their decision. Blanco admitted he had had a confrontation with a drunk woman; indeed, it was so loud that a neighbor telephoned the police to report the disturbance. If the officers could have seen or talked with the alleged victim, perhaps they would have been in a better situation to determine whether exigent circumstances existed. But there was no victim the officers could see or talk with. Under the facts of this case, we will not second-guess the officers' decision to enter the residence to investigate whether there was a victim that had been harmed. (*People v. Wilson* (1997) 59 Cal.App.4th 1053, 1063.)

The judgment is affirmed.